

IN THE UNITED STATES DISTRICT COURT
FOR DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

James Anderson McClellan,

Plaintiff,

v.

Amy W. Cox; Kevin J. Tyner,

Defendants.

C/A No. 7:23-cv-3231-SAL

ORDER

James Anderson McClellan, a pro se litigant, filed this action pursuant to 42 U.S.C. § 1983 against the named defendants. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.), United States Magistrate Judge Molly H. Cherry issued a Proper Form Order (the “Order”), notifying Plaintiff of missing proper form documents and pleading deficiencies in his Complaint. [ECF No. 5.] The Order also notified Plaintiff that a failure to bring the case into proper form could result in its dismissal. *Id.* at 7. In response, Plaintiff submitted a letter stating he “d[id] not want to file the complaint, [] the United States District Court sent to [him]. [EFC No. 8.]

This matter is before the court on the Report and Recommendation (the “Report”) issued by United States Magistrate Judge Molly H. Cherry, recommending the court dismiss this action without prejudice pursuant to Federal Rule of Civil Procedure 41(a) to the extent Plaintiff’s letter served as a voluntary dismissal of the action. [ECF No. 9.] In the alternative, if Plaintiff’s letter was not a notice of dismissal, but rather, a refusal to amend his complaint, the Report recommends the action be summarily dismissed. *Id.* at 4. Plaintiff was advised of his right to object to the Report

and the consequences he faced if he failed to do so. *Id.* at 11. Plaintiff did not object, and the time for doing so has expired.

The magistrate judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The court is charged with making a *de novo* determination of only those portions of the Report that have been specifically objected to, and the court may accept, reject, or modify the Report, in whole or in part. 28 U.S.C. § 636(b)(1). In the absence of objections, the court is not required to provide an explanation for adopting the Report and must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (citing Fed. R. Civ. P. 72 advisory committee’s note).

After reviewing the Report, the applicable law, and the record of this case in accordance with the above standard, the court finds no clear error, adopts the Report, ECF No. 9, and incorporates it by reference herein. As a result, this matter is **DISMISSED without prejudice, without leave to amend, and without issuance and service of process**. Plaintiff’s motion for leave to proceed in forma pauperis, ECF No. 2, is **TERMINATED AS MOOT**.

IT IS SO ORDERED.

March 25, 2024
Columbia, South Carolina


Sherri A. Lydon
United States District Judge